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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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WASHINGTON, D.C. 20554

In the Matter of

Amendment to the Commission's
Regulatory Policies Governing
Domestic Fixed Satellites and
Separate International Satellite Systems

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IB Docket No. 95-41

To: The Commission

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PETITION FOR PARTIAL RECONSIDERATION
AND IMMEDIATE INTERIM RELIEF

Howard D. Polsky
Keith H. Fagan
Neal T. Kilminster

COMSAT CORPORATION
COMSAT International
Communications

Richard E. Wiley
Lawrence W. Secrest, III
William B. Baker

WILEY, REIN & FIELDING

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**PETITION FOR PARTIAL RECONSIDERATION
AND IMMEDIATE INTERIM RELIEF**

COMSAT Corporation ("COMSAT"), by its COMSAT International Communications division, hereby petitions, pursuant to Section 1.429 of the Commission's Rules, for partial reconsideration of the Commission's *Report and Order*¹ in the above-captioned proceeding. COMSAT requests immediate interim authority to provide U.S. domestic service using the INTELSAT and Inmarsat systems,² pending a decision on general authorization policies in the upcoming *DISCO-II* rulemaking.³

¹ FCC 96-14 (released Jan. 22, 1996), *summary published* 61 *Fed. Reg.* 9946 (Mar. 12, 1996) ("*DISCO-I Order*").

² Given the number and size of incumbent providers of domestic satellite services, it should be indisputable that COMSAT would be classified as non-dominant in its provision of domestic satellite services via INTELSAT. Accordingly, no separate Section 214 authorization should be required for COMSAT to provide such service. *See* 47 C.F.R. § 63.07(a). If the Commission believes otherwise, COMSAT respectfully requests that it be notified accordingly.

³ COMSAT expressly agrees that it will modify or adjust its provision of
(continued...)

I. SUMMARY

COMSAT seeks immediate limited reconsideration of the *DISCO-I Order* and interim relief. In that order, the Commission generally authorized U.S. domestic satellite operators to provide international service. The FCC also allowed U.S.-licensed separate international systems to provide domestic service. At the same time, however, the agency declined to grant COMSAT a corresponding right to offer domestic service. Instead, the Commission indefinitely deferred any decision as to COMSAT's use of INTELSAT and Inmarsat capacity for domestic purposes, pending the outcome of a yet-to-be initiated *DISCO-II* rulemaking proceeding.

COMSAT's various satellite competitors -- including U.S.-licensed domestic and separate international systems and the "domestic" AMSC MSS system -- are now free to meet existing customer needs for integrated domestic and international services.⁴ Indeed, of all the U.S. companies that are capable of providing domestic service via their own satellite facilities, COMSAT is the only one omitted from the *DISCO-I Order*. This discriminatory treatment undermines the ability of COMSAT -- an

³(...continued)

domestic service upon completion of the *DISCO-II* phase of this proceeding to conform to any rules or policies adopted therein.

⁴ Among the satellite companies now able to combine international and domestic satellite services for customers are: AT&T Corp., American Mobile Satellite Corporation ("AMSC"), Columbia Communications Corporation, GE American Communications, Inc., Hughes Communications Galaxy, Inc., Orion Network Systems, Inc., and PanAmSat Corporation.

American corporation owned by American shareholders⁵ -- to compete fairly in this highly competitive marketplace. Singling out COMSAT for disfavored treatment is not only anticompetitive and unfair, but also inconsistent with the Satellite Act, which commits this Nation to support the INTELSAT and Inmarsat systems through COMSAT, and specifically states that "it is not the intent of Congress . . . to preclude the use of the [INTELSAT] system for domestic communications services."⁶

COMSAT should not be handicapped from competing until the Commission resolves the various issues associated with the entry into the U.S. market of purely *foreign* satellite entities. Regulatory parity on an interim basis would also benefit customers by helping to alleviate the current critical shortage of C-Band capacity.⁷

⁵ Foreign ownership of COMSAT stock is strictly limited under Section 304(d) of the Satellite Act. *See* 47 U.S.C. § 734(d). In sharp contrast, PanAmSat is approximately 40 percent owned by Televisa of Mexico, Orion is more than 50 percent owned by a variety of foreign interests, and AMSC is 16 percent owned by Singapore Telecom, yet all of these companies have been authorized to provide both domestic and international services while COMSAT, a corporation created by our own Congress, has been barred from using INTELSAT and Inmarsat capacity to serve the U.S. domestic market.

⁶ 47 U.S.C. § 701(d).

⁷ *See DISCO-I Order*, ¶ 23.

II. THE *DISCO-I ORDER* SEVERELY HANDICAPS COMSAT'S ABILITY TO SERVE CUSTOMERS EFFICIENTLY IN A HIGHLY COMPETITIVE TELECOMMUNICATIONS MARKET

In initiating the *DISCO-I* proceeding last April, the FCC proposed eliminating the distinction between its previous "transborder" policy and its "separate international systems" policy.⁸ The agency further suggested treating all U.S.-licensed geostationary fixed satellites under a single regulatory scheme. The FCC's intent in proposing these changes was "to increase competition in fixed-satellite services by increasing the amount of satellite capacity available for both domestic and international use, and to eliminate regulations that impair businesses' ability to meet their customers' needs."⁹

The *DISCO-I Order* adopted both proposals, effectively abolishing the former distinctions between domestic and international satellites. Under the *DISCO-I Order*, domestic fixed and mobile satellites may offer international services, and international satellites (separate satellite systems) may provide domestic services. This policy change benefits service providers, who now have access to more customers, and who may now offer convenient "one-stop shopping." Increased competition also benefits

⁸ *Domestic Fixed Satellites and Separate International Satellite Systems*, FCC 95-146, ¶ 1 (released April 25, 1995) (Notice of Proposed Rulemaking), *summary published* 60 *Fed. Reg.* 24,817 (May 19, 1995).

⁹ *Id.*, ¶ 1. COMSAT fully supported the Commission's proposals in its previous comments in this proceeding. See *Comments of COMSAT Corporation*, IB Docket No. 95-41 at 3 (June 8, 1995).

consumers, who will enjoy more options and will profit from the efficiency gains associated with access to integrated service packages and competitive suppliers of such offerings.

In the *NPRM*, the Commission also expressly solicited comment on whether COMSAT, a U.S. common carrier, should be permitted to provide domestic service using INTELSAT and Inmarsat capacity.¹⁰ Despite substantial submissions on this issue, the *DISCO-I Order* deferred to a later rulemaking any action on the provision of domestic service by non-U.S. satellites (including INTELSAT and Inmarsat).¹¹

As a consequence of this deferral, COMSAT is now the *only* U.S. provider unable to offer customers both domestic and international service on an integrated, "one-stop" shopping basis. COMSAT is also the *only* U.S. provider restricted by regulations limiting the geographic markets that it can serve. The *DISCO-I Order* has eliminated all such restrictions for *every single one* of COMSAT's competitors: domsat operators, DBS operators, the AMSC MSS system, and operators of U.S.-licensed separate international systems. Moreover, the *only* satellite capacity that is in-orbit,

¹⁰ *Id.*

¹¹ COMSAT summarized the benefits of allowing it to provide both international and domestic service in its opening comments. *See Comments of COMSAT Corporation*, IB Docket No. 95-41 at 4 (June 8, 1995). Other parties also had a full opportunity to comment on this issue. Accordingly, there is already a thorough record on this matter, and it is fully ripe for agency action with regard to the limited relief that COMSAT is herein requesting.

operational, and available *today* to serve the entire U.S. but is *not* deregulated by the *DISCO-I Order* is COMSAT's INTELSAT and Inmarsat capacity.¹²

Absent interim relief, COMSAT and its customers will suffer the consequences of unfair and discriminatory treatment:

- *While other U.S. systems are now able to provide both domestic and international services, COMSAT is still precluded from providing domestic services.* The *DISCO-I Order* frees domsat and U.S.-licensed MSS providers to compete with COMSAT for international traffic, in addition to their previously authorized domestic services. But the *Order* does not allow COMSAT to compete with domsat and U.S.-licensed MSS providers in the domestic market. Thus, while AMSC, for example, is free to solicit COMSAT's international customers, especially in the lucrative Caribbean region, COMSAT may not meet its customers' needs for domestic mobile services.
- *Unlike its competitors in the international market, COMSAT may not offer one-stop shopping.*¹³ The *DISCO-I Order* allows competing

¹² No single INTELSAT satellite is capable of providing 50-state coverage, and none is quite capable of providing full-CONUS coverage. However, the satellites at 307E and 310E provide virtual full-CONUS coverage (with the exception of the Pacific Northwest), and these satellites provide better coverage of CONUS than any separate system satellite (or any non-U.S. domsat). Beginning in mid-1997, there will also be an INTELSAT satellite at 304E that will provide substantial coverage of CONUS. In addition, the INTELSAT satellites ranging from 322.5E to 338.7E provide coverage throughout the eastern United States, and the INTELSAT satellites at 174E, 177E, 180E, and 183E provide coverage of the western United States, including Hawaii and Alaska.

The Inmarsat AOR-West satellite at 54.5W provides full CONUS coverage. The Inmarsat AOR-East satellite at 15.5W provides coverage of the eastern United States and the Inmarsat POR satellite at 177.5E provides coverage of the western United States, including Hawaii and Alaska.

¹³ COMSAT must obtain a separate authorization each time a customer wants the convenience of service through a single provider. This *ad hoc* process is extremely cumbersome for COMSAT and its customers and places unnecessary demands on the
(continued...)

separate international systems, such as PanAmSat, Orion, and Columbia, to offer both international and domestic services to meet their customers' needs and thereby enhance their ability to compete in all markets. But COMSAT is denied the same freedom.¹⁴

The *DISCO-I Order* contains no justification for this one-sided regulatory policy. The Order also does not explain why consumers with domestic communications needs are denied access to available capacity on the INTELSAT and Inmarsat systems

¹³(...continued)

FCC's resources. For example, COMSAT recently received authority to provide service using INTELSAT between points in Maine and Maryland on an incidental basis as an integral part of an international VSAT system. *COMSAT Corporation*, DA 96-370 (Sat. and Radiocom. Div. March 22, 1996). The lone blanket exception is authority to serve Puerto Rico and the U.S. Virgin Islands incidental to an international VSAT network. *Communications Satellite Corporation*, 8 FCC Rcd 1578 (1993).

¹⁴ This action compounds the market distortions created by the current asymmetric price regulation of COMSAT and its competitors. Separate international systems are not subject to any Title II regulation at all, because they are deemed to be non-common carriers, *see Separate International Systems*, 101 F.C.C.2d 1046 (1985), and AMSC is treated as a non-dominant carrier even though it is the only company allowed to provide domestic MSS services. *See Amendment of Parts 2, 22, and 25*, 2 FCC Rcd 485, 490 (1987). Furthermore, U.S.-licensed non-dominant carriers soon will be subject to one-day notice tariff regulation for international services, *see Streamlining the International Section 214 Process and Tariff Requirements*, IB Docket No. 95-118 (released March 13, 1996)(Report and Order), and the Commission recently proposed to eliminate the tariffing obligation for all non-dominant domestic carriers. *See Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61 (released March 25, 1996)(Notice of Proposed Rulemaking). In sharp contrast to all of the above, COMSAT is still classified as a dominant carrier and remains subject to the full panoply of public utility-type rate base, rate-of-return regulation under Title II. *See Petition for Partial Relief From the Current Regulatory Treatment of COMSAT World Systems' Switched Voice, Private Line, and Video and Audio Services*, RM-7913 (filed July 1, 1994). When these disparities in regulatory treatment in fully competitive markets are combined with the Commission's decision to break down outmoded domestic and international regulatory barriers -- for all U.S. providers *except* COMSAT -- consumers become frustrated with COMSAT's inability to serve their needs.

while, at the same time, the use of similar capacity from separate satellite systems (such as PanAmSat and Orion) is considered to be in the public interest and is immediately permitted.¹⁵ This inconsistent treatment of COMSAT and separate international system providers is especially curious given the FCC's recognition of the current critical shortage of C-Band capacity,¹⁶ which COMSAT's entry would help to alleviate.¹⁷

III. THE DISCRIMINATORY TREATMENT OF COMSAT IS INCONSISTENT WITH ESTABLISHED UNITED STATES POLICY REGARDING THE USE OF THE INTELSAT AND INMARSAT SYSTEMS

Pursuant to both treaty obligation and statutory law, the United States is committed to encouraging the use of INTELSAT and Inmarsat, which are multinational systems in which the United States historically has played a leading role. As the statutorily-designated U.S. Signatory to both the INTELSAT and Inmarsat agreements, COMSAT has actively advanced this national policy through very substantial financial

¹⁵ The *Order* made no effort to justify this disparate treatment of similarly situated satellite systems, despite a legal obligation to do so. See *Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *petition to recall mandate denied*, 463 F.2d 268 (D.C. Cir.), *cert. denied*, 403 U.S. 923 (1971).

¹⁶ *DISCO-I Order*, ¶ 23. The recent failure of the Anik E1 satellite will exacerbate this shortage even more. See *Communications Daily* (Mar. 28, 1996), at 3.

¹⁷ COMSAT estimates that the following INTELSAT capacity could be available for U.S. domestic use by the end of 1996: Atlantic Ocean Region, 6.75 36 MHz-equivalent units at C-Band, 8 units at Ku-Band, and 4 units cross-strapped (i.e., C-to-Ku or Ku-to-C); Pacific Ocean Region, 8 units at C-Band and 8 units at Ku-Band.

investments for many years. But this policy is now being undercut by a discriminatory FCC order that severely restricts COMSAT's ability to meet the competitive challenges posed by rival satellite operators.

The Satellite and Inmarsat Acts declare that it is the policy of the United States to establish and support the INTELSAT and Inmarsat systems. For example, the Satellite Act states that it is the policy of the United States to establish the INTELSAT system to "serve the communications needs of the United States and other countries."¹⁸ In 1985, Congress reconfirmed the U.S. commitment to INTELSAT by declaring that it is U.S. policy "as a party to [INTELSAT] to foster and support the global commercial communications satellite system owned and operated by INTELSAT."¹⁹ Indeed, the courts have confirmed that U.S. law requires the support of INTELSAT in recognition of its global public service obligations, *see Communications Satellite Corporation v. FCC*, 836 F.2d 623, 625 (D.C. Cir. 1988), and the Commission has regularly recognized the fundamental U.S. commitment to support the development of the Inmarsat system. *See, e.g., Communications Satellite Corporation*, 7 FCC Rcd 6278, 6281 (1992). Taken together, these treaties and

¹⁸ 47 U.S.C. § 701(a). *Accord* 47 U.S.C. §§ 751 & 753 (Inmarsat). Other provisions of the Satellite Act specifically require federal agencies to promote the use and development of the INTELSAT system. *See, e.g.,* 47 U.S.C. § 721(a)(President), § 721(b)(NASA), § 712(c)(FCC).

¹⁹ Foreign Relations Authorization Act, Pub. L. No. 99-93, 99 Stat. 425, Title I, § 146 (Aug. 16, 1985).

statutes demonstrate a substantial national commitment to the use and viability of the INTELSAT and Inmarsat systems.

Moreover, the FCC unquestionably has the legal authority to allow COMSAT to offer INTELSAT and Inmarsat capacity for service to domestic points. The INTELSAT Agreement specifically states that "INTELSAT space segment established to meet the prime objective [*i.e.*, international service] shall also be made available for other domestic public telecommunications service on a non-discriminatory basis to the extent that the ability of INTELSAT to achieve its prime objective is not impaired."²⁰ In fact, Congress specifically approved domestic use of INTELSAT capacity in the Satellite Act. *See* 47 U.S.C. § 701(d) ("it is not the intent of Congress by this Act to preclude the use of the [INTELSAT] communications satellite system for domestic communications services where consistent with the provisions of this Act").²¹ The Commission also has recognized that "the Inmarsat Convention does not limit use of the Inmarsat system to only communications that are international in character." *Provision of Aeronautical Services via the Inmarsat System*, 4 FCC Rcd 6072, 6090 n.26 (1989).

²⁰ INTELSAT Agreement, Art. III(c).

²¹ Pursuant to that authority, COMSAT actually offered U.S. domestic service via INTELSAT for almost ten years before U.S. domestic satellites were launched. Now that the U.S. domsat industry has over thirty operational satellites, COMSAT's re-entry would clearly advance competition by offering consumers yet another choice.

While these treaties and statutes do not require that the Commission *favor* COMSAT in its regulatory policies, they strongly suggest that it is inappropriate for the Commission to *disfavor* COMSAT or to treat this U.S. company as if it were a foreign entity in which the U.S. has no recognized interest. COMSAT manifestly is not a foreign company; furthermore, INTELSAT and Inmarsat themselves were established under U.S. leadership. The U.S. remains by far the largest stakeholder in each organization, and there is nothing in the history of either INTELSAT or Inmarsat which suggests that these systems should be treated as "foreign" or placed in the same category as foreign satellite entities. It is thus improper to tie domestic use of INTELSAT and Inmarsat space segment to consideration of the access to the U.S. market that will be accorded to purely foreign satellite systems.²²

Given the foregoing, COMSAT submits that its INTELSAT and Inmarsat capacity should promptly be made available for domestic use on an interim basis. The Commission has on several occasions approved requests by COMSAT to use INTELSAT capacity for incidental domestic service on a case-by-case basis. The requested interim relief would simply remove the need for COMSAT to apply for such authority on a case-by-case basis until the FCC completes its *DISCO-II* proceeding.²³

²² Granting this request would not invite a flood of other entities to request the same relief. The U.S. statutory commitment to the INTELSAT and Inmarsat systems readily distinguishes them from purely foreign systems.

²³ While the Commission may well initiate *DISCO-II* in the near future, there is no way of knowing when the rulemaking will be completed.

The limited relief sought in this petition would preserve the Commission's ability to adopt any policy changes that it ultimately deems appropriate at the conclusion of the *DISCO-II* round of this proceeding. In the meantime, the Commission would not have handicapped an American corporation to which the Nation is strongly committed by disabling it from fairly competing in a marketplace that the Commission has now opened up for everyone else to provide both domestic and international service.

IV. CONCLUSION

For the foregoing reasons, COMSAT respectfully petitions for partial reconsideration of the *DISCO-I Order*. In particular, COMSAT requests immediate


interim authority to provide INTELSAT and Inmarsat space segment capacity for domestic service within the United States, pending the outcome of the *DISCO-II* proceeding.²⁴

Respectfully submitted,

COMSAT CORPORATION
COMSAT International
Communications

Of Counsel
Richard E. Wiley
Lawrence W. Secrest, III
William B. Baker

WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

By: 
Howard D. Polsky
Vice President, Legal Affairs
Keith H. Fagan
Assistant General Counsel
Neal T. Kilminster
Assistant General Counsel

6560 Rock Spring Drive
Bethesda, Maryland 20817
(301) 214-3000

Its Attorneys

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²⁴ The Commission should also grant promptly COMSAT's pending application to provide Inmarsat digital services domestically. *See Application of COMSAT Corporation*, File No. ITC 95-341 (May 12, 1996).